

### REMARKS

Although claims 1-127 are pending, claims 1-49, 54, 56-59, 63, 65-68, 75-119 have been withdrawn from consideration. Accordingly, claims 50-53, 55, 60-62, 64, 69-74, and 120-127 are at issue.

Claims 50-53, 55, 60-62, 64, 69-74 and 120-127 have been rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-22 and 24-29 of U.S. Patent No. 5,935,601 ("the '601 Patent").

While not conceding the propriety of the Examiner's rejection, in order to advance prosecution, applicants will submit a terminal disclaimer over the '601 Patent upon the finding of allowable subject matter.

Claims 50-53, 55, 60-62, 64, 69-74 and 120-127 have been rejected under 35 U.S.C. §103(a) as obvious over the '601 Patent.

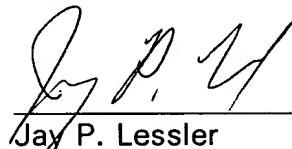
Applicants respectfully traverse this rejection and request reconsideration.

Submitted herewith is an unexecuted Declaration of Michael Goldberg. Applicants will submit an executed copy of the Declaration by facsimile in the near future. The Declaration states that this application and the '601 Patent were, at the time the invention claimed in this application was made, owned by Emisphere Technologies, Inc. or subject to an obligation of assignment to Emisphere Technologies, Inc. Accordingly, the '601 Patent is not prior art under 35 U.S.C.

§103 (see 35 U.S.C. §103(c) and M.P.E.P. "706.02(I) and 804.03). Applicants respectfully request withdrawal of this rejection..

An early and favorable action on the merits, is now respectfully requested.

Respectfully submitted,



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